

The opinion in support of the decision being entered today
was **not** written for publication and
is **not** binding precedent of the Board.

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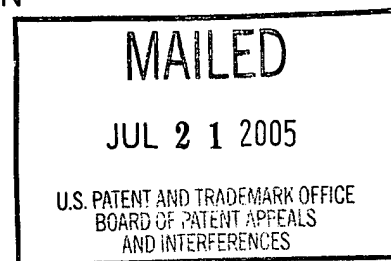
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL A. HELGESON

Appeal No. 2005-0992
Application No. 09/311,092

ON BRIEF



Before: BLANKENSHIP, SAADAT and NAPPI, **Administrative Patent Judges.**

NAPPI, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1 through 34. For the reasons stated *infra* we affirm-in-part the examiner's rejection of these claims.

Invention

The invention relates to a building monitoring system that utilizes wireless, bi-directional radio frequency communication between master and remote units. The invention makes use of remote units having low transmission duty cycles, low power consumption and validation capabilities. See page 1 of appellant's specification.

Claim 1 is representative of the invention is and reproduced below:

1. A building monitoring system utilizing bi-directional radio frequency communication comprising:

at least one master unit including a radio frequency transmitter and receiver; and

a plurality of remote units having a radio frequency transmitter and receiver, said remote units capable of transmitting to and receiving from said master unit of the building monitoring system.

References

The references relied upon by the examiner are:

Reis et al. (Reis)	5,973,613	Oct. 26, 1999 (filed Nov. 17, 1997)
Jacobsen et al. (Jacobsen)	6,198,394	Mar. 6, 2001 (filed Dec. 5, 1996)

Rejection at Issue

Claims 1, 2, and 10 through 20 stand rejected under 35 U.S.C. § 102 as being anticipated by Jacobsen. Claims 1, 3 through 9, 23 through 29 and 31 through 34 stand rejected under 35 U.S.C. § 102 as being anticipated by Reis. Claims 21 and 22 stand rejected under 35 U.S.C. § 103 as being obvious over

Jacobsen. Claim 30 stands rejected under 35 U.S.C. § 103 as being obvious over Reis and Jacobsen.

Opinion

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answers.

With full consideration being given to the subject matter on appeal, the examiner's rejections and the arguments of appellant and the examiner, and for the reasons stated *infra* we sustain the examiner's rejections of claims 1 through 20, 23 through 29 and 31 through 34 under 35 U.S.C. § 102 and the examiner's rejection of claims 21 and 22 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claim 30 under 35 U.S.C. § 103.

Grouping of the claims.

At the outset, we note that appellant states, on page 20 of the brief, that:

Appellant asserts that claims 1-22 stand or fall together and that claims 23-24 stand or fall together.

37 C.F.R. § 1.192(c) (7) (2002) as amended at 62 Fed. Reg. 53196 (October 10, 1997), which was controlling at the time of appellant filing the brief, states:

For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and in the argument under paragraph (c) (8) of this section appellant explains why the claims of the group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

Appellant have not provided separate arguments for claims 23-34.

Accordingly, we will consider the claims in four groups, one group for each rejection. Group 1, for the rejection under 35 U.S.C. § 102 relying upon Jacobsen, consists of claims 1, 2, and 10 through 20, and we will treat claim 1 as representative of that group. Group 2, for the rejection under 35 U.S.C. § 102 relying upon Reis, consists of claims 1, 3 through 9, 23 through 29 and 31 through 34, with claim 1 as representative of that group. Group 3, for the rejection under 35 U.S.C. § 103 relying upon Jacobsen, consists of claims 21 and 22 and we will treat claim 21 as representative of that group. Group 4, for the rejection under 35 U.S.C. § 103 relying upon Reis in view of Jacobsen, consists of claim 30.

Rejection under 35 U.S.C. § 102 in view of Jacobsen.

We first consider the rejection of claims 1, 2, and 10 through 20 under 35 U.S.C. § 102 as being anticipated by Jacobsen. Appellant argues, on page 20 of the brief, that Jacobsen is not prior art as Jacobsen is not relevant to the claimed invention of a building monitoring system. Appellant asserts that Jacobsen teaches a personnel monitoring system. On page 21 of the brief,

appellant asserts that although Jacobsen teaches that the device can be used at long term care facilities this teaching does not pertain to a building monitoring system. On page 22 of the brief, appellant reasons that Jacobsen could be used to monitor "patients outside of the facility or building as well, and thus such monitoring would not be anything of the building." On page 23 of the brief, appellant asserts that "[a]n outdoor location of the personnel [such as is possible with Jacobsen] would not aid in any kind of building monitoring. The nursing home or respective building could be robbed, damaged or be burning without any indication by the Jacobsen et al. remote personnel monitoring device on such a patient.

In response, on page 18 of the supplemental answer, the examiner states: "the recitation of 'a building monitoring system' has not been given patentable weight because the recitation occurs in the preamble." On page 1 of the supplemental answer, the examiner further states:

Assuming phrase a building monitoring system is given patentable weight, it is [the] examiner's position that a building monitoring system is read as monitoring building statistics or monitoring building alarms, or a system for monitoring in a building; Jacobsen et al. teach an individual status unit to be made smaller and provided to residents of long-term care facilities (column 16, lines 46 to 60). When considering the Jacobsen et al. reference, one skilled in the art readily recognizes resident of long term care facilities implies places such as nursing homes. Clearly these are buildings. Therefore, when considering the broadest reasonable interpretation of the claims, Jacobsen et al. anticipate a building monitoring system.

In the reply brief, appellant asserts that the limitation of a building monitoring system is claimed in the independent claims and reiterates that Jacobsen does not teach a building monitoring system. Appellant asserts, on

page 4 of the reply brief, that in Jacobsen “[I]t is not the nursing home or building that is the object of monitorship, for such things as prevention of harm to the building or harm of the building to the residents. Clearly it is the personnel that are being monitored.”

While we disagree with the examiner’s finding that the limitation of a building monitoring system is not recited in the independent claims we concur with the examiner’s findings of the scope of the claim term “building monitoring system.” We note that representative claim 1 recites the term “building monitoring system” twice, once in preamble and again the body of the claim, as such we find that the claim is limited to building monitoring systems. However, we concur with the examiner’s findings that the scope of the claim term “building monitoring system” is broad and includes “monitoring building statistics or monitoring building alarms, or a system for monitoring in a building.”

Claims will be given their broadest reasonable interpretation consistent with the specification, limitations appearing in the specification will not be read into the claims. *In re Etter* 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985). In analyzing the scope of the claim, office personnel must rely on the appellant’s disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir. 1995). “[I]nterpreting what is *meant* by a word in a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” (emphasis original) *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, 64 USPQ2d 1202, 1205, (Fed. Cir. 2002) (citing *Intervet*

America Inc v. Kee-Vet Laboratories Inc. 12 USPQ2d 1474, 1476 (Fed. Cir. 1989)). “[T]he terms used in the claims bear a “heavy presumption” that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” ***Texas Digital Sys, Inc. v. Telegenix, Inc.***, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002). “Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted.” (citation omitted). “Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected.” ***Texas Digital Systems, Inc. v. Telegenix, Inc.***, 308 F.3d at 1204, 64 USPQ2d at 1819 (Fed. Cir. 2002).

We do not find a specific definition of a building monitoring system in appellant’s specification. Appellant’s specification on page 1, states “the present invention relates to building monitoring and control systems such as security, HVAC or other monitoring systems that utilize wireless, bi-directional radio frequency communication between master units and remote units.” Similarly, page 2 states “Building monitoring and control systems including security system, HVAC and other monitoring and control systems are in increasing use in both commercial buildings and residential dwellings.” Thus, while we find that appellant’s specification does discuss that the term building monitoring system can apply to systems which monitor parameters of the building we do not find that the specification so limits the term, rather we find that it is also used to

describe the “other monitoring and control systems in buildings.” Accordingly, we consider that the examiner’s interpretation of the claim limitation of building monitoring system as “monitoring building statistics or monitoring building alarms, or a system for monitoring in a building” to be reasonable and supported by appellant’s specification.

We find that Jacobsen does teach a building monitoring system in that Jacobsen teaches a system for monitoring in a building. We find that Jacobsen teaches a monitoring system for monitoring personnel status, the system measuring physiological and geolocation of the person. See column 2, lines 50-55. The sensors and remote monitoring unit can be arranged to be worn by a soldier. See figure 1 and description in column 5, line 66- column 6, line 14. The remote monitoring unit communicates with a command unit which contains a transceiver. See column 14, lines 14-19. Jacobsen also teaches that the device can be modified to be used in long term care facilities. See column 16, lines 48-60. We concur with the examiner that such facilities include buildings. Thus, we find that Jacobsen teaches a system for monitoring in a building. As stated *supra*, we consider the scope of the claim limitation “building monitoring system” includes a system for monitoring in buildings, accordingly we find that Jacobsen anticipates this limitation of representative claim 1.

On pages 23 and 24 of the brief, appellant argues, in response to an assertion that the examiner made in the final office action that the monitoring of residents in a long term care facility are similar to a building monitoring system, that an anticipation rejection requires that the invention be identically disclosed

not similarly disclosed. We are not persuaded by this argument. As stated *supra* we consider the scope of the limitation “a building monitoring system” as broad and includes “a system for monitoring in a building.” As such, we find that Jacobsen does identically anticipate the claim limitation.

For the foregoing reasons we sustain the examiner’s rejection of claims 1, 2 and 10 through 20 under 35 U.S.C. § 102 as being anticipated by Jacobsen.

Rejection under 35 U.S.C. § 102 in view of Reis.

We next consider the rejection of claims 1, 3 through 9, 23 through 29 and 31 through 34 under 35 U.S.C. § 102 as being anticipated by Reis. Appellant argues on page 25 of the brief, that Reis should not be considered prior art as it is not relevant to the claimed invention as Reis is a messaging system and not a building monitoring system. Appellant’s arguments on pages 26 and 27 of the brief are similar to the arguments directed to Jacobsen.

We are not persuaded by appellant’s arguments. As stated *supra* we consider the scope of the limitation “a building monitoring system” as broad and includes “a system for monitoring in a building.” We find that Reis teaches a building monitoring system in that it teaches a system for monitoring in a building, and a system that monitors statistics of the building. Reis teaches a pager system with industrial application for use in a facility (building) for more than simple paging. See column 4, lines 38-40. The pagers (items 8 of figure 3) have bidirectional communication with an interrogator (item 7 of figure 3). See column 10, lines 46-57. Reis teaches pagers in conjunction with sensors can be used to: implement an access control scheme (see column 4, lines 40-49, column 8, lines

43-44); keep a log of roving guards (see column 4, lines 54-57); maintain inventory control of expensive portable equipment in hospitals (column 8, lines 49-56) and monitor environment conditions (see column 42, lines 17-26). Many of these applications are within a building, i.e. access control within a building, maintaining a log of roving guards in a building and inventory control within a hospital (a building). Thus, we find that Reis teaches a system for monitoring in a building. Further, we note that while we do not find the independent claims to be limited to a building monitoring system that provide an indication of the building being robbed or damaged, as implicitly asserted by appellant's arguments on page 26 of the brief, we find that Reis does teach a system which would give such an indication as Reis teaches monitoring locks, and inventory control in a building. For the foregoing reasons we sustain the examiner's rejection of claims 1 through 9, 23 through 29 and 31 through 34 under 35 U.S.C. § 102 as being anticipated by Reis.

Rejection under 35 U.S.C. § 103 in view of Jacobsen.

We next consider the rejection of claims 21 and 22 under 35 U.S.C. § 103 as being obvious over Jacobsen. On page 27 of the brief, appellant asserts that the rejection is improper for the reasons argued with respect to the rejection under 35 U.S.C. § 102. Further, appellant asserts, on pages 27 and 28 of the brief, that "there is no suggestion or motivation in Jacobsen et al. to modify Jacobsen et al. to have sensor variables that pertain to monitoring a building as claimed."

We are not convinced by appellant's arguments. Claims 21 and 22 depend upon claim 20. As stated *supra* we find that Jacobsen anticipates the limitations of a building monitoring system as claimed in claim 20. Claims 21 and 22 add the limitations "wherein said sensor variable is a binary variable" (claim 21) and "wherein said sensor variable is a continuous variable" (claim 22). We do not find that these limitations limit the scope of the term "a building monitoring system" (i.e. they do not narrow the limitation to preclude the interpretation of "a system for monitoring in a building") rather these limitations limit the format of the sensor variable. The examiner states, on page 16 of the supplemental answer:

Jacobsen et al. did not clearly disclose wherein said sensor variable is binary or continuous variable. However, Jacobsen et al. teach that sensors variable is a physiological variable (column 2, lines 50 to 55) and an environmental variable (column 9, lines 37 to 40.)

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to associate a physiological variable such as heart rate, motion status and standing or in a prone position as a binary variable and an environmental variable such as breathing rate, oxygen saturation and ambient temperature as a continuous variable (column 6 lines 21 to 37) as evidenced by Jacobsen et al. ...

We concur with the examiner, and find that Jacobsen provides suggestion that some of the variables monitored by the sensors are binary and others are variable. Accordingly, we sustain the examiner's rejection of claims 21 and 22 under 35 U.S.C. § 103.

Rejection under 35 U.S.C. § 103 in view of Reis and Jacobsen.

Finally, we consider the examiner's rejection of claim 30 under 35 U.S.C. § 103 as being obvious over Reis and Jacobsen. Appellant argues on page 29 of the brief that "[t]here appears not to be a suggestion or motivation in Reis et al.

or Jacobsen et al. relative to the method particularly for the combination to provide remote unit arming and disarming in response to messages received from a master unit as it relates to sensing and transmitting data for monitoring a building.”

We concur with the appellant. The examiner states, on page 17 of the answer, that Reis does not teach changing from an armed or disarmed state upon receipt of a message from the master unit and that Jacobsen teaches arming and disarming in response to a message in column 12, lines 13-15. Further, the examiner, asserts that “[o]ne skill [*sic*, skilled] in the art to [would have] recognize[d] the need for a method of changing to armed or disarmed state from the master unit and while in said armed or disarmed state ... with the motivation that the remote unit would use little consumption of power and the system is secured by having the master unit has full control of the remote units.” The section of Jacobsen, which the examiner relies upon, column 12 lines 13 through 15, describes the computer 330 turning on/off the GPS unit 70. Figure 5a of Jacobsen shows that both the GPS 70 and the computer 330 are part of the medic unit 320. Thus, we find that Jacobsen teaches that the command to turn on/off the GPS unit is not from the master unit as asserted by the examiner. As we find that Jacobsen does not teach or suggest that the master unit arm or disarm the remote unit as claimed in claim 30, we find that Jacobsen fails to provide motivation to so modify Reis. Accordingly, we will not sustain the examiner’s rejection of claim 30 under 35 U.S.C. § 103.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief or by filing a reply brief have not been considered and are deemed waived by appellant (see 37 CFR § 41.37(c)(1)(vii)). Support for this rule has been demonstrated by our reviewing court in *In re Berger* 279 F.3d 975, 984, 61 USPQ2d 1523, 1528-1529 (Fed. Cir. 2002) wherein the Federal Circuit Court stated that because the appellant did not contest the merits of the rejections in his brief to the Federal Circuit Court, the issue is waived. ***See also In re Watts*** 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

In summary, we sustain the examiner's rejections of claims 1 through 20, 23 through 29 and 31 through 34 under 35 U.S.C. § 102 and the examiner's rejection of claims 21 and 22 under 35 U.S.C. § 103. However, we will not sustain the examiner's rejection of claim 30 under 35 U.S.C. § 103. The decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

Howard B. Blankenship

HOWARD B. BLANKENSHIP
Administrative Patent Judge

Makshid D. Badat

MAHSHID D. SAADAT
Administrative Patent Judge


ROBERT E. NAPP

ROBERT E. NAPPI
Administrative Patent Judge

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